

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEPHTY CRUZ, *et al.*,

Plaintiffs,

-against-

PINNACLE MANAGING CO., LLC, *et al.*,

Defendants.

07 Civ. 6391 (GBD)

NOTICE OF MOTION

PLEASE TAKE NOTICE that Plaintiffs, by their undersigned counsel, will move this Court, before the Honorable George B. Daniels, United States District Judge for the Southern District of New York, at a date and time to be set by the Court, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, for an Order pursuant to Rule 12(b)(6) and (f) of the Federal Rules of Civil Procedure dismissing the First Counterclaim and striking the Second Affirmative Defense. The grounds for this motion, as more fully set in the accompanying memorandum of law, are that the First Counterclaim fails to state a claim upon which relief can be granted, and the Second Affirmative Defense is insufficient as a matter of law.

Dated: New York, New York
March 31, 2008

BARNES, IACCARINO, VIRGINIA,
AMBINDER & SHEPHERD, PLLC

By: /s/ Marc A. Tenenbaum

Charles R. Virginia (CV 8214)

Marc A. Tenenbaum (MT 3426)

Trinity Centre

111 Broadway, Suite 1403

New York, New York 10006

(212) 943-9080

Counsel for Plaintiffs

TO: Ira N. Glauber, Esq.
Jaffe & Asher LLP
600 Third Avenue
New York, NY 10016
Counsel for Defendants